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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2011-522

12 **NICOLE PRODANY**
13 **4725 Woolsey Cr.**
Capitola, CA 95010
14 **Registered Nurse No. 550752**
Nurse Anesthetist Certificate No. 3035

A C C U S A T I O N

15 Respondent.

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17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about December 24, 1998, the Board of Registered Nursing issued Registered
23 Nursing License Number 550752 to Nicole Prodany (Respondent). The Registered Nursing
24 License was in full force and effect at all times relevant to the charges alleged in this Accusation
25 and will expire on May 31, 2012, unless renewed.

26 3. On or about October 30, 2003, the Board of Registered Nursing issued Nurse
27 Anesthetist Certificate Number 3035 to Nicole Prodany (Respondent). The Nurse Anesthetist
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1 Certificate was in full force and effect at all times relevant to the charges alleged in this
2 Accusation and will expire on May 31, 2012, unless renewed.

3 JURISDICTION

4 4. This Accusation is brought before the Board of Registered Nursing (Board),
5 Department of Consumer Affairs, under the authority of the following laws. All section
6 references are to the Business and Professions Code unless otherwise indicated.

7 5. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part,
8 that the Board may discipline any licensee, including a licensee holding a temporary or an
9 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
10 Nursing Practice Act.

11 6. Section 2826 states, in relevant part:

12 "(a) 'Nurse anesthetist' means a person who is a registered nurse, licensed by the board and
13 who has met the standards for certification from the board."

14 7. Section 2764 of the Code states:

15 "The lapsing or suspension of a license by operation of law or by order or decision of the
16 board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the
17 board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding
18 against such license, or to render a decision suspending or revoking such license."

19 8. Under section 2811, subdivision (b) of the Code, the Board may renew an expired
20 license at any time within eight years after the expiration.

21 9. Section 118, subdivision (b) of the Code provides that the suspension, expiration,
22 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
23 disciplinary action during the period within which the license may be renewed, restored, reissued
24 or reinstated.

25 STATUTORY PROVISIONS

26 10. Section 2761 of the Code states, in relevant part:

27 "The board may take disciplinary action against a certified or licensed nurse or deny an
28 application for a certificate or license for any of the following:

1 "(a) Unprofessional conduct . . ."

2 11. Section 2762 of the Code states, in relevant part:

3 "In addition to other acts constituting unprofessional conduct within the meaning of this
4 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
5 chapter to do any of the following:

6 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed
7 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or
8 administer to another, any controlled substance as defined in Division 10 (commencing with
9 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
10 defined in Section 4022.

11 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
12 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
13 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
14 himself or herself, any other person, or the public or to the extent that such use impairs his or her
15 ability to conduct with safety to the public the practice authorized by his or her license."

16 12. Section 2770.11 of the Code states:

17 "(a) Each registered nurse who requests participation in a diversion program shall agree to
18 cooperate with the rehabilitation program designed by the committee and approved by the
19 program manager. Any failure to comply with the provisions of rehabilitation program may
20 result in termination of the registered nurse's participation in a program. The name and license
21 number of a registered nurse who is terminated for any reason, other than successful completion,
22 shall be reported to the board's enforcement program.

23 "(b) If the program manager determines that a registered nurse, who is denied admission
24 into the program or terminated from the program, presents a threat to the public or his or her own
25 health and safety, the program manager shall report the name and license number, along with a
26 copy of all diversion records for that registered nurse, to the board's enforcement program. The
27 board may use any of the records it receives under this subdivision in any disciplinary
28 proceeding."

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19. Vicodin is a brand name for Hydrocodone. Hydrocodone is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(J), and a dangerous drug as designated by Business and Professions Code section 4022.

COST RECOVERY

20. Section 125.3 of the Code provides, in relevant part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct)
(Bus. & Prof. Code §§ 2761(a))

21. Respondent has subjected her nursing license to discipline for unprofessional conduct under Code section 2761, subdivision (a), in that, while working as a nurse anesthetist, she diverted drugs for her own use from her employer. The circumstances are as follows:

22. On or about March 2009, Respondent began diverting various drugs while working as a nurse anesthetist at Kaiser-Santa Clara Medical Facility (Kaiser). At times, Respondent would go to work on days she was not scheduled to divert various drugs for her own use. Ultimately, her diversion of drugs was discovered by Kaiser. She worked at Kaiser until February 19, 2010, and resigned from her position on May 20, 2010.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Use of Controlled Substances and Dangerous Drugs)
(Bus. & Prof. Code §§ 2762(a) and 2762(b))

23. Respondent has subjected her nursing license to discipline for unprofessional conduct under Code section 2762, subdivision (a) and 2762, subdivision (b) (unprofessional conduct relating to use of controlled substances or dangerous drugs) in that she used various controlled substances and dangerous drugs. The circumstances are as follows:

24. On or about March 9, 2010, after a break-up with a boyfriend, Respondent began diverting drugs from Kaiser, her employer, for her own use. Respondent admits to using various opiates and benzodiazepines including Morphine, Vicodin, Dilaudid, Midazolam, and Zanax.

25. Respondent applied for the Board's Diversion Program and was accepted into the program by the Diversion Evaluation Committee (DEC) on May 16, 2010. On June 15, 2010, Respondent's urine sample tested positive for alcohol. The DEC deemed this a relapse and mandated that she enter a residential treatment program for a minimum of 28 days. On June 25, 2010, Respondent notified the Board's Diversion Program that she had been buying urine on the internet to use for her drug tests and that the specimen that tested positive was not hers. Respondent explained that she did not want to attend an inpatient treatment program because she did not want to be away from her significant other and she wanted to be able to drink wine occasionally. On June 28, 2010, the Diversion Program manager terminated Respondent from the Board's Diversion Program and deemed Respondent a public safety risk.

P R A Y E R

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nursing License Number 550752, issued to Nicole Prodany;
2. Revoking or suspending Nurse Anesthetist Certificate Number 3035;
3. Ordering Nicole Prodany to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
4. Taking such other and further action as deemed necessary and proper.

DATED:

12/14/10

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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